THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 1115 of 2007

DATE: 25-06-2007

Between :

Mahadasu Jhansi Lakshmi

… Petitioner

And

State Bank of India,
Gandhi Nagar Branch,
Rep., by its Manager,
Vijayawada.

… Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 1115 of 2007

ORDER:

The petitioner herein had availed cash credit loan of Rs.15,00,000/- from the respondent-Bank by hypothecating the stocks in trade and other movable assets as primary security apart from depositing the title deeds in respect of immovable property situated in R.S.No.14/1, Vidhyadharapuram, Vijayawada towards additional security. Since the petitioner committed default in repayment of the loan amount, the respondent-Bank having invoked the provisions under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Securitisation Act'), issued demand notice dated 03-07-2004 calling upon the petitioner to discharge the liability in full, within 60 days, failing which the respondent would proceed to exercise the rights under sub-section (4) of Section 13 of the Securitisation Act. Since the petitioner failed to comply with the same, the possession notice dated 17-01-2005 under Section 13(4) of the Securitisation Act was issued followed by registered notice dated 14-06-2005 calling upon the petitioner to handover possession of the immovable property mortgaged to the Bank so as to bring the same to sale for realization of the dues. Having received the same, the petitioner moved the Debts Recovery Tribunal, Visakhapatnam under Section 17 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'Recovery of Debts Act') by filing S.A.No.102 of 2005. Pending the proceedings, the petitioner sought for interim stay of auction and the same was granted by the Debts Recovery Tribunal by order dated 27-

06-2005 subject to the condition of petitioner depositing Rs.2,00,000/- on or before 29-08-2005.

It is not in dispute that the petitioner failed to deposit the amount as directed by the Tribunal. However, the Bank did not take any steps for sale of the property, but filed O.A.No.117 of 2006 before the Debts Recovery Tribunal, Visakhapatnam under Section 19 of the Recovery of Debts Act, seeking recovery of the amounts due from the petitioner as well as guarantor. It is not in dispute that the said proceedings are pending. While so, the impugned tender notice dated 14-12-2006 has been published in the local daily inviting sealed tenders for sale of mortgaged property for realization of the amounts due to the respondent-Bank. Hence, this writ petition seeking a declaration that the action of the respondent in issuing the impugned tender notice invoking the provisions of the Securitisation Act, while O.A.No.117 of 2006 filed by the respondent-Bank is pending before the Debts Recovery Tribunal, is arbitrary and illegal.

I have heard the learned counsel for both the parties and perused the counter affidavit filed by the respondent-Bank as well as the other material on record.

Since the facts narrated above are not in dispute, the only question that arises for consideration is whether the respondent-Bank is entitled to take steps for sale of secured assets under the Securitisation Act while the recovery proceedings under Debts Recovery Act are pending before the Tribunal.

Learned counsel for the petitioner vehemently contended that in view of Section 19(1) of the Recovery of Debts Act, the Bank is not entitled to take any steps without withdrawing the proceedings pending before the Debts Recovery Tribunal.

The very same contention has been considered by the Supreme Court in detail in ***Transcore (M/s) v. Union of India and another***[1] and while rejecting the contention, the Supreme Court held as under:

"For the above reasons, we hold that

> withdrawal of the O.A. pending before the DRT under the DRT Act is not a precondition for taking recourse to NPA Act. It is for the bank/FI to exercise its discretion as to cases in which it may apply for leave and in cases where they may not apply for leave to withdraw."

It is also relevant to note the following observations made by the Supreme Court.

> "In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply. According to American Jurisprudence, 2d, Vol.25, page 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Equity (Thirty-first Edition, page 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, the doctrine of election has no application."

In view of the ratio laid down by the Supreme Court, it is clear that the doctrine of election is not applicable and consequently the respondent-Bank is entitled to take steps for sale of the secured assets under the Securitisation Act notwithstanding the pendency of the recovery proceedings before the Debts Recovery Tribunal.

As could be seen, the petitioner having availed the remedy under Section 17 of the Securitisation Act, committed default in complying with the conditional order passed by the Tribunal and allowed the proceedings initiated under the Securitisation Act to become final.

Hence, it is not open to the petitioner to challenge the consequential sale proceedings on any ground whatsoever.

Accordingly, the writ petition, which is devoid of any merit, is dismissed. No costs.

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G. ROHINI, J

Date:25-06-2007
KLP

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[1] 2007(1) ALD 109 (SC)